

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

RAMON ARAGON, *et al.*,

Defendants.

69cv07941 BB-ACE

RIO CHAMA STREAM SYSTEM
Section 7: Rutherford & Plaza Blanca

Subfile No. CHRU-004-0044

**REPLY BY STATE OF NEW MEXICO TO RESPONSE
TO MOTION (NO. 7901) TO SET ASIDE DEFAULT JUDGMENT**

At the Status Conference in Santa Fe on June 14, 2005 the undersigned counsel for the State of New Mexico, *ex rel.* State Engineer (“State”) described its position and some of the circumstances surrounding filing of the Motion to Set Aside Default Judgment by Mr. Henry G. Coors (“Motion”) (Doc. No. 7901). The Motion was among the matters to be discussed at that Status Conference pursuant to the Addendum to Order Setting Status Conference filed June 1, 2005 (Doc. No. 7908). Counsel for Mr. Coors failed to attend the conference. At the request of the Special Master at the conference, the State makes this Reply to the Response (Doc. No. 7909) filed by Steven Padilla, Timothy Andrews and Dianna Andrew (“Defendants”) to the Motion to Set Aside Default Judgment filed by Mr. Coors.

1. The State does not oppose the Motion to Set Aside Default Judgment. The State’s takes this position based on the representation made to counsel that Mr. Coors was mistaken as to whether he had any water rights, that he believed the water rights had in fact been transferred and therefore was

willing to let things go by default. The State takes no position on whether the Motion to Set Aside Default Judgment that was filed by Mr. Coors meets the requirements of F. R. Civ. P. Rule 60. The State incorrectly assumed that an earlier draft of the Motion provided for review would be revised to specifically assert grounds for setting the judgment aside under F. R. Civ. P. Rule 60(b)(1) (mistake, inadvertence, surprise, or excusable neglect).

2. The State agrees with Defendants that the State Engineer never issued a permit for the transfer of water rights described in paragraph 5 of the Motion. Further, the State agrees with the Defendants that there was never a hearing before the State Engineer in connection with the proposed transfer (OSE Application 1545 and 1699 into 4656), as asserted in paragraph 6 of the Motion.

3. The State Engineer has never taken the position that the Default Judgment filed October 11, 2004 cancels a transfer of water rights to the Rutherford Water Association as asserted in paragraph 7 of the Motion. Mr. Coor's proposed transfer application (OSE Application 1545 and 1699 into 4656) had neither been approved nor denied at the time the default order was entered, and the water rights that were the subject of the application at all times remained appurtenant to their original place of use. The application was eventually denied on January 25, 2005. (Exhibit 1 attached hereto). The stated reason for the denial was that

Pursuant to an Order Granting Motion for Default Judgment filed October 11, 2004 (Doc. No. 7611) by the United States District Court for the District of New Mexico, Henry Coors has no interest in the irrigation water rights described in Subfile CHRU-004-0044 (move-from lands) of the Rutherford Section of the Rio Chama Hydrographic Survey.

(Exhibit 2 attached hereto).

4. The State agrees with Defendants that the Court should grant sanctions under F. R. Civ.

P. 16(f) for Mr. Coors failure to appear at the scheduling conference in Santa Fe before Special Master Gabin on September 20, 2004.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I hereby certify that copies of the above Reply by State of New Mexico to Response to Motion (No. 7901) to Set Aside Default Judgment were mailed to following persons on June 17, 2005.

/s/ Ed Newville
Edward G. Newville

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